# Table of Contents

## Introduction

- **Moldova Background**
  - Legal Context
  - History of the Judiciary
  - Structure of the Courts
  - Conditions of Judicial Service
    - Qualifications
    - Appointment and Tenure
    - Training
  - Assessment Team

- **Moldova Judicial Reform Index (JRI) 2002 Analysis**
  - Table of Factor Correlations
  - **I. Quality, Education, and Diversity**
    - 1. Judicial Qualification and Preparation
    - 2. Selection/Appointment Process
    - 3. Continuing Legal Education
    - 4. Minority and Gender Representation
  - **II. Judicial Powers**
    - 5. Judicial Review of Legislation
    - 6. Judicial Oversight of Administrative Practice
    - 7. Judicial Jurisdiction over Civil Liberties
    - 8. System of Appellate Review
    - 9. Contempt/Subpoena/Enforcement
  - **III. Financial Resources**
    - 10. Budgetary Input
    - 11. Adequacy of Judicial Salaries
    - 12. Judicial Buildings
  - **IV. Structural Safeguards**
    - 14. Guaranteed Tenure
    - 15. Objective Judicial Advancement Criteria
    - 16. Judicial Immunity for Official Actions
    - 17. Removal and Discipline of Judges
    - 18. Case Assignment
    - 19. Judicial Associations
V. Accountability and Transparency .................................................................30
20. Judicial Decisions and Improper Influence ..............................................30
21. Code of Ethics ...........................................................................................31
22. Judicial Conduct Complaint Process .......................................................32
23. Public and Media Access to Proceedings .................................................32
24. Publication of Judicial Decisions ...............................................................33
25. Maintenance of Trial Records .................................................................34

VI. Efficiency ..................................................................................................35
26. Court Support Staff ..................................................................................35
27. Judicial Positions .......................................................................................35
28. Case Filing and Tracking Systems .............................................................36
29. Computers and Office Equipment ...............................................................37
30. Distribution and Indexing of Current Law ................................................37
Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association’s Central and East European Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA/CEELI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department’s Human Rights Report and Freedom House’s Nations in Transit. This assessment will not provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country’s judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country’s legal system.

Assessing Reform Efforts

Assessing a country’s progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret “evidence of impartiality, insularity, and the scope of a judiciary’s authority as an institution.” Larkins, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

1. the reliance on formal indicators of judicial independence which do not match reality,
2. the dearth of appropriate information on the courts which is common to comparative judicial studies,
3. the difficulties inherent in interpreting the significance of judicial outcomes, or
4. the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his “judicial effectiveness score,” Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, Judicial Protection of the Constitution in Latin America, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).
The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries’ courts, placing such dependent courts as Brazil’s ahead of Costa Rica’s, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, supra, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. E.g., Larkins, supra, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: “[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy.” Larkins, supra, at 616.

ABA/CEELI’s Methodology

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 “On the Independence, Efficiency, and Role of Judges”; and Council of Europe, the European Charter on the Statute for Judges. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a “scoring” mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI’s Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country’s reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of that statement to that country’s judicial system. Where the statement strongly corresponds to the reality in a
given country, the country is to be given a score of “positive” for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, The Chinese Communist Party and ‘Judicial Independence’: 1949-59, 82 Harv. L. Rev. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country’s judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA/CEELI offers this product as a constructive step in this direction and welcomes constructive feedback.

Acknowledgements

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association’s Central and East European Law Initiative (ABA/CEELI) (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-Present) directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

During the course of developing the JRI, ABA/CEELI benefited substantially from two expert advisory groups. ABA/CEELI would like to thank the members of ABA/CEELI’s First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally,
ABA/CEELI would like to thank the members of its Second Judicial Advisory Board, including Luke Bierman, Macarena Calabrese, Elizabeth Dahl, Elizabeth Lacy, Paul Magnuson, Nicholas Mansfield, Aimee Skrzekut-Torres, Roy T. Stuckey, Robert Utter, and Russell Wheeler, who stewarded its completion. Finally, ABA/CEELI also expresses its appreciation to the experts who contributed to the ABA/CEELI Concept Paper on Judicial Independence: James Apple, Dorothy Beasley, Nicholas Georgakopolous, George Katrugalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.
Moldova Background

Legal Context

The Republic of Moldova is an independent state, administratively divided into eleven counties (to be replaced in 2003 with thirty-two districts called raions) and the Gagauz Autonomous Territorial Unit. Although the Constitution declares Moldova a unitary state, the government does not in fact control the Transnistrian region along Moldova’s eastern border. Even though the proclaimed independent status of Transnistria has not been internationally recognized, Transnistria maintains a separate legal system to which Moldovan legislation is not applicable. The Moldovan government and Transnistrian authorities have begun negotiations on a proposal for federalization of Moldova to resolve Transnistria’s status.\(^1\) The Republic of Moldova is governed by a president, the government (executive), Parliament, the judiciary, a Constitutional Court, and local officials.

Legislative authority lies with Parliament, which consists of 101 deputies elected for four-year terms. Parliament’s responsibility includes passing laws, providing legislative interpretations, ratifying or denouncing international treaties, passing bills of amnesty, proposing new legislation, approving the national budget, and calling referenda. Parliament approves, in a vote of confidence, the entire list of government members and the government’s proposed policy program, presented by the President’s nominee for prime minister. The Parliament can also dismiss the prime minister and government in a simple-majority, no-confidence vote.

The President of Moldova is head of the state and holds executive powers in conjunction with the government. The President is elected for a four-year term by Parliament in a secret vote. The President represents the state in international relations and is commander-in-chief of the armed forces. He appoints the prime-minister, who must pass a confidence vote in Parliament. If two appointees fail to pass such a vote, the President may dissolve Parliament and call for early elections. This procedure may also be used when a legislative deadlock continues for three consecutive months. The laws passed by Parliament are submitted to the President for promulgation. The President can send the legislation back to the Parliament for reconsideration, but he or she cannot veto it if Parliament adopts it a second time.

The government consists of a prime-minister, vice prime-ministers, ministers, and other members. It is responsible for proposing and implementing the domestic and foreign policy of the state and for exercising control over public administration.

In February 2001, parliamentary elections were won by the Party of Moldovan Communists, which now holds 71 of the 101 seats in Parliament. Vladimir Voronin, president of the party, was elected to the office of President.

The judicial branch is composed of the judges of the district courts, the tribunals,\(^2\) the Court of Appeal, the Supreme Court of Justice, and the specialized courts, as well as the prosecutors. The Constitutional Court, which is not part of the judiciary, rules on constitutional issues only.

---

\(^1\) At the time of this writing, the status of Transnistria remains one of a self-proclaimed republic. As a result of the ongoing dispute between Transnistria and the Republic of Moldova, interviews were severely limited and did not produce significant data from which the authors were able to draw conclusions with respect to the state of judicial reform in Transnistria. Therefore, the content of this report and the conclusions reached exclude the judicial system in Transnistria.

\(^2\) The Constitution of the Republic of Moldova was amended by law passed November 21, 2002, which when implemented will affect Articles 115, 116, 122 and 123 of the Constitution. Among other things, this amendment eliminates the tribunals and establishes multiple courts of appeal. As the Amendment has not been implemented as of the date of this writing, the authors have not discussed the amendments represented by this law. See Constitutional Amendment, Law No. 1471-XV of 21.11.2002, M.O. No.169/1054-1294 (2002).
The hierarchy of laws begins with the Constitution and any amendments thereto, followed by “organic laws,” which are those laws adopted by Parliament to enable specific provisions within the Constitution. Ordinary laws passed by Parliament are next in the hierarchy. Sub-statutory normative acts fall under the ordinary laws and consist of Presidential decrees and normative acts of state agencies. International treaties and conventions regarding human rights to which Moldova is a party overrule its national laws, pursuant to article 4 of the Constitution of the Republic of Moldova.

History of the Judiciary

The Moldavian principality was established as a sovereign state in the middle of the 14th century. In 1812, following the Russian-Turkish war, the territory of the Moldavian principality between the Dniester and Prut rivers was incorporated into the Russian Empire as a separate province called Bessarabia. In 1918, Bessarabia became part of Romania, and its judiciary followed the Romanian structure and laws until 1940, when the territory was annexed to the Soviet Union, becoming one of its fifteen republics.

During the Soviet era, the Moldovan judiciary was composed of a two-tiered court system, with local courts and the Supreme Court of the Soviet Socialist Moldavian Republic, which, in turn, was subordinated to the Supreme Court of the USSR. Judicial review of first instance decisions consisted of only cassation and extraordinary review; appellate review was not authorized. The adversarial principle was not used during trials, and courts had an active role in investigating cases. The Soviet system did not provide for the separation of powers. As a result, the judiciary, as well as executive and legislative bodies, formed a single government subject to the Communist party.

In August 1991, Moldova declared its independence from the USSR, and in June 1994 Parliament adopted the Concept Paper for Judicial and Legal Reform, aimed at creating a new status and function for the courts and modifying the status of judges. Also in 1994, the newly-adopted Constitution established a legal framework for the organization and functioning of the judiciary. Under the Constitution, the legislative, executive, and judicial branches are separate. The judicial reform was largely implemented in 1996, after the necessary enabling legislation was enacted.

Structure of the Courts

Moldova has a four-tiered court system consisting of the Supreme Court of Justice, the Court of Appeal, tribunals, and district/municipal courts. The Military Court, the Economic Court of Chisinau Circuit, and the Economic Court of the Republic of Moldova are specialized courts within the judicial system, created to examine certain categories of cases. In 2000, administrative sections were created within the common courts to review administrative acts.

The Supreme Court of Justice is the highest court in the judicial system. It acts as the highest court of cassation and performs extraordinary review of judicial decisions. The procedural rules provide for three modes for the review of judicial decisions: (1) appellate review (the reviewing court may re-evaluate the facts); (2) cassation review (the reviewing court may generally only re-evaluate application of the law to the facts); and (3) extraordinary review (re-opening a case upon discovery of extraordinary circumstances, e.g., a criminal offense committed by a judge relating to the court’s decision). The Supreme Court also has jurisdiction to act as a first instance court in certain cases established by law (e.g., criminal cases against high officials, such as the President of Moldova; Parliamentary deputies; members of the government; judges of the Constitutional Court, the Supreme Court of Justice, and the Court of Appeal; members of Court of Accounts; prosecutors of General Procuracy and of the Court of Appeal level; and generals). The Supreme Court operates through its Civil, Criminal, and Economic chambers or collectively through the
Plenum consisting of all its judges. The Plenum of the Supreme Court of Justice may issue
general explanatory decisions on both substantive and procedural laws that lie outside the
context of a particular case in order to instruct lower courts on the interpretation and application of
certain laws. However, these explanatory decisions are not binding and do not act as precedent.

The Court of Appeal, located in Chisinau, has appellate and cassation jurisdiction over decisions
of lower courts. It also examines certain delineated categories of cases as a first instance court
(e.g., administrative cases against acts of central public authorities).

Five tribunals, in Chisinau, Balti, Bender, Cahul, and Comrat, have appellate jurisdiction over
decisions of district and municipal courts and examine as a first instance court specifically
identified categories of cases (e.g., deliberate murder committed under aggravating
circumstances).

There are forty-four district and municipal courts that act as the first instance court for all
criminal, civil, and administrative cases that are not specifically entrusted to other courts. Their
decisions are subject to review by the higher courts.

Specialized courts have jurisdiction over limited categories of cases. The two Economic Courts
hear commercial disputes, including bankruptcy, between legal entities and individuals registered
as entrepreneurs. The Chisinau Economic Court acts as a first instance court, and the
Republican Economic Court is an appellate court and also has original jurisdiction over certain
cases provided by law (e.g., when an application has been filed to protect state interests). The
Supreme Court of Justice is the cassation court for decisions issued by the Economic Courts.

The Military Court of Chisinau Garrison has jurisdiction over criminal cases involving military
personnel. It may also hear civil cases regarding damages caused through military criminal
offenses. Panels of the Court of Appeal and of the Supreme Court of Justice have appellate and
cassation jurisdiction over decisions of the Military Court and may hear the most serious cases as
a first instance court.

The Constitutional Court is formally outside the judicial branch and is independent of any other
public authority. It is the sole body of the constitutional jurisdiction in the Republic of Moldova,
and it performs the following functions: (1) rules on the constitutionality of Parliament’s laws and
decisions, of the President’s decrees, and of the government’s decisions and ordinances, as well
as of international treaties to which Moldova is a party; (2) interprets the Constitution; (3)
formulates a position on initiatives to revise the Constitution; (4) confirms the results of republican
referenda; (5) confirms the results of parliamentary and presidential elections; (6) ascertains the
circumstances justifying dissolution of Parliament, dismissal of the President or the interim office
of the President of Moldova, or the inability of the President to perform his duties for more than
sixty days; (7) decides exceptional cases of unconstitutionality of legal acts, upon notification by
the Supreme Court of Justice; and (8) decides matters dealing with the constitutionality of political
parties. Legal acts determined to be unconstitutional become void as of the date of the court’s
decision.

Conditions of Service

Qualifications

All judges must be competent, hold a university degree in law, have requisite work experience,
have no criminal record, have a good reputation, and know the official state language. Judicial
candidates for a municipal or district court must have reached the age of thirty years and have
either a minimum of five years of legal experience, or if the candidate has less than five but more
than three years of experience, he or she must first complete a professional internship with a
court. Judicial candidates for the tribunals, the Court of Appeal, or the Supreme Court of Justice
are required to have not less than five, seven, or fifteen years experience as a judge, respectively. The November 2002 amendment reduced the requirement for judges of the Supreme Court of Justice to ten years of experience as a judge.

Judicial candidates for the Constitutional Court must hold a university degree in law, have a high degree of professional competence, and have at least fifteen years of work experience in the field of law, in higher legal education, or in scientific research.

**Appointment and Tenure**

Judges of district/municipal courts, tribunals, the Court of Appeal, and specialized courts are appointed by the President of the Republic of Moldova on the proposal of the Superior Council of Magistracy. Each judge is appointed for a five-year term, after which the judge may be reappointed through the mandatory retirement age (65 years).

Judges of the Supreme Court of Justice are appointed by Parliament on the proposal of the Superior Council of Magistracy. They serve through the mandatory retirement age.

Parliament, the government, and the Superior Council of Magistracy each appoint two of the six judges to the Constitutional Court. They are appointed for a six-year term and can be reappointed, but only for a second six-year term.

**Training**

There is no specific legal requirement that judges participate in continuing legal education. However, the law requires judges “to enlarge their professional knowledge, to study and generalize the case law”, and inadequate professional qualification may serve as grounds for dismissal. The Judicial Training Center, subordinated to the Ministry of Justice, was established to provide practical and theoretical training for judges.

**Assessment Team**

The Moldova JRI 2002 Analysis assessment team was led by Thomas Cope and Marin Chicu, and benefited in substantial part from Samantha Healy, as well as Roberta Gubbins and Catalina Cataraga of CEELI’s Criminal Law Reform Program. ABA/CEELI Washington staff members Scott Carlson and Julie Broome served as reviewers and editors. The conclusions and analysis are based on interviews conducted in Moldova during the summer and fall of 2002 and documents reviewed during that period and beyond (until October 2002). Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.
# Moldova JRI 2002 Analysis

## Table of Factor Correlations

<table>
<thead>
<tr>
<th>I. Quality, Education, and Diversity</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Factor 1: Judicial Qualification and Preparation</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 2: Selection/Appointment Process</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 3: Continuing Legal Education</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 4: Minority and Gender Representation</td>
<td>Positive</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>II. Judicial Powers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Factor 5: Judicial Review of Legislation</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 6: Judicial Oversight of Administrative Practice</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 7: Judicial Jurisdiction over Civil Liberties</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 8: System of Appellate Review</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 9: Contempt/Subpoena/Enforcement</td>
<td>Negative</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>III. Financial Resources</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Factor 10: Budgetary Input</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 11: Adequacy of Judicial Salaries</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 12: Judicial Buildings</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 13: Judicial Security</td>
<td>Negative</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IV. Structural Safeguards</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Factor 14: Guaranteed Tenure</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 15: Objective Judicial Advancement Criteria</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 16: Judicial Immunity for Official Actions</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 17: Removal and Discipline of Judges</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 18: Case Assignment</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 19: Judicial Associations</td>
<td>Neutral</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>V. Accountability and Transparency</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Factor 20: Judicial Decisions and Improper Influence</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 21: Code of Ethics</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 22: Judicial Conduct Complaint Process</td>
<td>Positive</td>
</tr>
<tr>
<td>Factor 23: Public and Media Access to Proceedings</td>
<td>Neutral</td>
</tr>
<tr>
<td>Factor 24: Publication of Judicial Decision</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 25: Maintenance of Trial Records</td>
<td>Negative</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VI. Efficiency</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Factor 26: Court Support Staff</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 27: Judicial Positions</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 28: Case Filing and Tracking Systems</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 29: Computers and Office Equipment</td>
<td>Negative</td>
</tr>
<tr>
<td>Factor 30: Distribution and Indexing of Current Law</td>
<td>Negative</td>
</tr>
</tbody>
</table>
I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges must have university-level legal training and, except for the district courts and the Constitutional Court, have specified amounts of judicial experience. District court and Constitutional Court judges must have specified amounts of legal, but not necessarily judicial experience. No specific training courses are required, although certain district court candidates are required to serve an internship with a court.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

All candidates for judicial appointment must be legally competent citizens of the Republic of Moldova residing therein, hold a university degree in law, have the work experience required by law, not have a criminal record, have a good reputation, know the official state language, and be medically able to function as a judge. LAW OF THE REPUBLIC OF MOLDOVA ON STATUS OF A JUDGE art. 6, Law No. 544-XIII of 20.07.1995, M.O. 59-60/664 (1995), last amended by Law No. 1099-XV of 06.06.2002 [hereinafter LAW ON JUDICIAL STATUS]. Candidates for district courts must be at least thirty years of age and either have at least five years of legal experience or have served an internship with a court if they have less than five but more than three years of legal experience. Id. arts. 7(1), 10(1). Candidates for tribunals, the Court of Appeal, or the Supreme Court of Justice are required to have not less than five, seven, or fifteen (ten under the recent constitutional amendment) years experience as a judge, respectively. Id. art. 7(2).

The requirement for a university degree in law entails four or five years of undergraduate legal education (depending upon whether students have eleven or twelve years of education before matriculation). Many regard legal education in Moldova as inadequate preparation for judicial appointment for various reasons, including law schools with inadequate facilities, inexperienced professors, inadequate curricula, insufficient practical training, and corruption. These criticisms were particularly leveled against the numerous new law schools that sprang up in the past decade, seeking to capitalize on the popularity of legal studies following independence. Moldova State University has greatly expanded its law program, with some 5,000 students—almost one-third of the student body—enrolled in the law faculty. Furthermore, many law students in Moldova receive their legal education from correspondence schools, which interviewees consider substandard, as such schools often do not provide sufficient education in the theory of law.

Although many respondents criticized the qualification and training of judicial candidates, some even suggested that many candidates lack the necessary life experience to make sound

decisions. In 2001, Parliament raised the minimum age for district court judges from twenty-five to thirty years and the legal experience requirement from two to five years. Id. art. 7(1). It is still too soon to know how effective this will be in encouraging more qualified and experienced candidates to seek judicial appointment. Some respondents suggested that the increased age and work experience requirements will make internships or training of candidates in a postgraduate institution unnecessary.

Although candidates for judicial appointment in the district courts must now have at least five years of legal experience (or three years of experience plus an internship), they will not necessarily have practiced before courts of law. Recent amendments to the Law on Judicial Status significantly broadened the categories of acceptable legal experience to make it easier for the Superior Council of Magistracy (SCM) to fill judicial vacancies. For example, a candidate may now satisfy this requirement through experience as an investigator, notary, legal consultant, law professor, judicial executor, or court clerk. Id. art. 10/1. Candidates with between three and five years of legal experience may also qualify for judicial appointment by serving an internship in a district court for six months to one year under the supervision of a judge appointed by the SCM. Id. art. 10. During 2001, eight candidates were admitted to internships with district courts in Moldova. Superior Council of Magistracy, Report on Organization and Operation of Degrees of Jurisdictions in the Republic of Moldova in 2001, BULLETIN OF THE SUPREME COURT OF JUSTICE, SPECIAL EDITION (Mar. 28, 2002) [hereinafter SCM 2001 REPORT]. Some interviewees considered a one-year internship sufficient to acquire the skills necessary to become a judge, but others disagreed. This difference of opinion may be due to the fact that, as some respondents observed, the quality of training during an internship depends to a large degree on the commitment and the professional level of the supervising judge. To improve the qualifications of candidates for judicial appointment to district courts, the government is considering establishing a National Institute of Magistrates. The Institute would be a postgraduate institution offering two or three years of training for judicial candidates and would also have responsibility for continuing education of judges. Presently, however, the government lacks the necessary funds to establish and operate the Institute.

Candidates for all other courts must have previous judicial experience. Judges of these higher courts are therefore generally regarded as more qualified than those of the district courts.

In addition to the qualification requirements in the Law on Judicial Status, candidates for appointment to the Circuit Economic Court and to the Economic Court of the Republic of Moldova must have at least five or seven years experience as a judge, respectively. LAW OF THE REPUBLIC OF MOLDOVA ON THE ECONOMIC COURTS art. 22, Law No. 970-XIII of 24.07.1996, M.O. 77/742 (1996), last amended by Law No. 951-XV of 04.04.2002, M.O. 66-8/531 (2002) [hereinafter LAW ON THE ECONOMIC COURTS]. Candidates for the military courts must meet both the qualification requirements provided by the Law on Judicial Status and be acting military officers. LAW OF THE REPUBLIC OF MOLDOVA ON THE SYSTEM OF MILITARY COURTS art. 19, Law No. 836-XIII on 17.05.96, M.O. 51/482 (1996), last amended by Law No. 543-XV of 12.10.2001, M.O. 141-43/1095 (2001) [hereinafter LAW ON THE MILITARY COURTS].

Different requirements apply for appointment to the Constitutional Court. In addition to a university degree in law, the statute requires that candidates have “high professional competence and experience of no less than 15 years in the field of law, higher legal education, or legal research activities.” LAW OF THE REPUBLIC OF MOLDOVA ON THE CONSTITUTIONAL COURT art. 11(1), Law No. 317-XIII of 13.12.1994, M.O. 8/86 (1995), last amended by Law No. 1570-XV of 21.06.2002, M.O. 1-2/4 (2003) [hereinafter LAW ON THE CONSTITUTIONAL COURT]. Although interviewees generally praised the work of the Constitutional Court, two expressed the view that there are no specialists in constitutional law among the present judges of the Constitutional Court.
Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although passage of an examination and other objective criteria are required for judicial appointment, complaints have been voiced about the alleged preponderance of other considerations, especially during the last two years, as well as the fairness of the examinations.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The SCM recently began the practice of advertising judicial vacancies in the mass media, giving interested persons one month to submit applications. Those seeking appointment to a court must submit an application to the SCM. LAW ON JUDICIAL STATUS art. 9; LAW OF THE REPUBLIC OF MOLDOVA ON THE QUALIFICATION BOARD AND ATTESTATION OF JUDGES art. 17(1), Law No. 949-XIII of 19.07.1996, M.O. 61-62/605 (1996), last amended by Law No. 373-XV of 19.07.2001, M.O. 129/926 (2001) [hereinafter LAW ON THE QUALIFICATION BOARD]. If an applicant meets the requirements specified in the Law on Judicial Status, discussed in Factor 1, supra, the SCM will forward his or her application to the Qualification Board under the SCM, which will organize a qualification examination or an examination for admission to an internship, as appropriate. LAW ON THE QUALIFICATION BOARD arts. 17(2), 18, 20. (Because judges of the higher courts must have judicial experience, normally in the district court, procedures for appointment of such judges are discussed in Factor 15, infra.) The Qualification Board consists of two judges of the Supreme Court of Justice, two judges of the Court of Appeal, one judge from each tribunal and specialized court, two professors from the law faculty of Moldova State University, and one representative from the Ministry of Justice (MOJ). Id. art. 2. The judges are elected by the judges of their respective courts, the professors are selected by the SCM, and the representative of the MOJ is appointed by the Minister of Justice. Members of the Qualification Board cannot be members of SCM or the Disciplinary Board. Id. art. 3.

Candidates for judicial appointment must pass the qualification examination, which includes both oral and written parts. The oral portion covers subjects such as civil, criminal, administrative, constitutional, economic, and labor law; civil and criminal procedure; judicial organization; and the status of judges. Id. art. 20(2)(a). The written portion requires candidates to draft two procedural documents resolving hypothetical cases. Id. art. 20(2)(b). Following the qualification examination, the Board recommends the candidate who received the highest score (or the one who has more professional experience and is older if two or more receive the same score). Id. art. 21. Unsuccessful applicants may appeal the Qualification Board's recommendation to the SCM. Id. art. 13(1).

Following receipt of the Qualification Board’s recommendations and documentation concerning the candidate, the SCM will nominate a candidate for appointment by the President of Moldova or Parliament, as appropriate. LAW OF THE REPUBLIC OF MOLDOVA ON THE SUPERIOR COUNCIL OF MAGISTRACY arts.19, 21, Law No. 947-XIII on 19.07.1996, M.O. 64/641 (1996), last amended by Law No. 373-XV of 19.07.2001, M.O. 129/926 (2001) [hereinafter LAW ON THE SCM]. The President of Moldova appoints judges to district courts, tribunals, the Court of Appeal, and the specialized courts; Parliament appoints all judges to the Supreme Court of Justice. CONSTITUTION OF THE REPUBLIC OF MOLDOVA art. 116, M.O. 1 (1994), last amended by Law No. 1471-XV of
Because the SCM is required to nominate the most qualified candidate, it is not bound by the Qualification Board’s recommendations, and it may accept, modify, or reject them. See Law on the SCM arts. 19(2), 21. The SCM transmits the personnel file and curriculum vitae on the candidate and its nomination, together with a draft presidential decree or parliamentary decision, as appropriate. Id. art. 19(3). The President or Parliament may then accept or reject the SCM’s nomination. Following rejection of a candidate, the SCM may nominate the same or a different candidate for the position. Id. art. 19(4).

Interviewees voiced contradictory opinions on the objectivity of the selection and appointment process for judges in Moldova. Some stated that the qualification examination covers too many subjects and includes too many theoretical issues, making it difficult for the majority of applicants, who completed their legal studies at least four years previously, to do well. A judge, who welcomed the idea of the qualification examination, complained that too much emphasis is placed on theory rather than practice. Some interviewees contended that appointments are affected by favoritism or political influence, making the qualification examination a mere formality, because favored applicants are more likely to be selected. One even claimed that some favored candidates are given information before the examination to enable them to improve their scores. On the other hand, some, including members of the Qualification Board and SCM, reported that selection and appointment are based on objective rather than subjective criteria and that the process is competitive. Regardless of the adequacy of the examination process, another stated that the lack of sufficient candidates for district court vacancies forces the SCM to nominate candidates with low scores.

Another issue relates to the structure of the SCM itself. It consists of eleven magistrates with five-year terms. Five are ex officio members (the Minister of Justice, the President of the Supreme Court of Justice, the President of the Court of Appeal, the President of the Economic Court, and the Prosecutor General), three are elected through secret vote by the plenum of the Supreme Court of Justice, and another three are elected by Parliament from among accredited law professors. Law on the SCM. art. 3. Many interviewees considered the SCM to be unrepresentative of the judiciary at large. For example, some complained that judges of district courts and tribunals, who constitute the majority of the judiciary, are not represented at all, judges of the Supreme Court of Justice are over-represented, and judges of the Economic Court and the Court of Appeal cannot elect their representatives, since the presidents of their courts, who are ex officio members of the SCM, are appointed court presidents by the President of Moldova on the recommendation of the SCM. Some interviewees also thought that the Minister of Justice and the Prosecutor General should not be members in SCM. Another complaint was that other branches of government can exercise control over the judiciary, because the majority of SCM members are directly appointed or elected by either the legislative or executive branches.

Parliament, the Government of the Republic of Moldova, and the SCM each appoint two judges to the Constitutional Court, which is comprised of six judges, serving a six-year term. Const. art. 136.
Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no requirement for continuing education of judges. Although the Judicial Training Center provides useful training, its work largely depends on international donors for support. The Supreme Court of Justice also conducts annual seminars for judges on legal developments.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The law does not provide for specific continuing legal education, although it does require judges “to deepen their professional knowledge, to study and generalize the judicial practice.” LAW ON JUDICIAL STATUS art. 15(4). Because insufficient professional qualification can be a basis for removal from office, judges have an incentive to engage in such study. See id. art. 25.1(l). Furthermore, judges are generally required to pass an attestation examination every five years, which includes an assessment of their professional knowledge. LAW ON THE QUALIFICATION BOARD arts. 23(2), 25(2).

To address the need for training judges, court personnel, and prosecutors, the government established a post-graduate educational institute in 1996, the Republican Center for Training and Perfecting the Staff of the Ministry of Justice and the General Prosecution Office, commonly referred to as the Judicial Training Center (JTC). DECISION OF GOVERNMENT OF THE REPUBLIC OF MOLDOVA ON CREATING THE REPUBLICAN CENTER FOR TRAINING AND PERFECTING THE STAFF OF THE MINISTRY OF JUSTICE AND GENERAL PROSECUTION OFFICE NO. 96 of 22.02.1996, M.O. 23-24/191 (1996) [hereinafter DECISION ON THE JTC]. Subordinated to the MOJ, the JTC is responsible for providing practical and theoretical training for judges, consultants, chiefs of chancellery, judicial executors (i.e., officials responsible for enforcing judgments), stenographers, notaries, and the staff of the General Prosecution Office. Id. The JTC is governed by a Methodical and Control Council (including members of donor organizations), which proposes and oversees implementation of its training programs, proposes appointment of teaching staff, and supervises its financial activity. BYLAWS OF THE METHODICAL AND CONTROL COUNCIL dated 28.02.1997, art. 2 (copy on file with authors). The MOJ appoints the JTC’s teaching staff and approves its training programs. DECISION ON THE JTC art. 2. To date, the JTC has been largely funded by international donors (including the Soros Fundation, UNDP, UNHCR, and ABA/CEELI), which raises concerns about its long-term sustainability. In 1999, for example, only 6.6% of the JTC’s budget was provided by the government. JUDICIAL TRAINING CENTER, 1999-2000 Activity Report (Chisinau 2000).

Since 1998, the JTC has organized courses based on the judges’ level of experience. (e.g., for judges with less than one year’s experience, those with one to five years’ experience, those with more than five years’ experience, and presidents of courts). The average length of these courses is twenty days, but there are also shorter courses of one to three days. Subjects include both national and international law. For example, during 1998-2000 the JTC organized special courses for 260 judges to prepare them for attestation examinations, based on a curriculum drafted by the SCM. International donor organizations have also funded JTC seminars. Interviewees reported that judges are asked to complete questionnaires identifying subjects for JTC trainings and that generally their views are taken into account in the design of courses. Interviewees who had participated in JTC courses described the courses as useful and essential.
in the education of the judges. Some interviewees stated, however, that quality of the courses could be improved and the frequency of the courses was insufficient to raise the professional level of the judiciary. During 1998-2001, almost all judges in Moldova attended one of the JTC’s courses.

Judges of the Supreme Court of Justice also contribute to the continuing education of other judges through regional one-day seminars held each year. These seminars cover issues involving the application of legislation, and the judges of the Supreme Court of Justice participate as experts. During 2001, for example, sixteen regional seminars were held in Chisinau, Balti, Cahul, and Bender for judges of different courts, including four seminars for judges of the Court of Appeal, tribunals and economic courts. SCM 2001 REPORT. Interviewees recognized the need for education, especially in light of the continuing fundamental changes to the laws with the passage of new Civil and Criminal Codes to replace the Soviet-era codes. The interviewees praised the seminars presented by the Supreme Court of Justice, reporting that they are informative and include timely discussions of legal developments.

In addition, the presidents of district courts, tribunals, and the Court of Appeal are mandated to provide professional training for the judges and staff of their courts. LAW OF THE REPUBLIC OF MOLDOVA ON ORGANIZATION OF THE JUDICIARY arts. 27(1)(f), 33(1)(e), 39(1)(e), Law No. 514-XIII of 06.07.1995, M.O. 58/641 (1995), last amended by Law No. 486-XV of 28.09.2001, M.O. 121-23/865 (2001) [hereinafter LAW ON JUDICIAL ORGANIZATION]. In some courts, judges meet informally on a weekly basis to discuss recent legislation and case law. One interviewee explained that in the Court of Appeal, the judges present research reports to their colleagues analyzing case law on a given topic.

Factor 4: Minority and Gender Representation

*Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethnic minorities are well represented in the judiciary, there appears to be no discrimination on the basis of religion, and women constitute some 30% of judges, including a number in leadership roles.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Moldova is a multi-ethnic state. According to the most recent statistics (from 1989), the population of the former Soviet Socialist Moldavian Republic [hereinafter S.S.M.R.] was composed of: 64.5% Moldovans, 13.8% ethnic Ukrainians, 13% ethnic Russians, 3.5% ethnic Gagauz, and 2% ethnic Bulgarians, as well as lesser percentages of Roma, Jews, and others. There is considerable uniformity as to religion, with an estimated 97% of Moldovans identifying themselves as Orthodox Christians. No legislation relating to the judiciary discriminates against ethnic or religious minorities or on the basis of gender. Under the Constitution, all citizens of Moldova are guaranteed equality before the law and public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property, or social origin. CONST. art. 16(2).

The absence of relevant statistics makes it difficult to evaluate the representation of ethnic and religious minorities in the judiciary. However, interviewees generally stated that there is no discrimination on ethnic or religious grounds, with all major ethnic groups represented within the
judiciary. In the “Gagauz Yeri” Territorial Administrative Unit, where ethnic Gagauz constitute a majority of the population, interviewees stated that this ethnic group is fairly represented on the bench. For example, the presidents of the Comrat district court and the Comrat tribunal are both ethnic Gagauz. (Comrat is the capital of the Gagauz region). However, a Russian-speaking judge noted that the statutory requirement of knowing the official language, Moldovan (i.e. Romanian), can act as an indirect impediment to advancement to a higher court. There are no Roma judges, which is attributed to the lack of Roma with law degrees.

Respondents generally stated that there is no discrimination on the basis of religion in judicial appointments. Candidates who meet the statutory requirements for judicial appointment, irrespective of their religion, may file an application with the SCM, and the SCM does not require candidates to disclose their religion. Some interviewees said that they regard a judge’s religion as a private matter and did not even know the religion of other judges on their court.

Women held 100 of the 332 judicial positions as of January 1, 2002. The number of women judges is expected to increase, since the number of female law students now exceeds the number of male students and there are no obvious obstacles to women becoming judges. At least as to courts in the capital city, women are well represented in positions of leadership. For example, six women are presidents of different courts in Chisinau, including the two highest courts in Moldova, the Supreme Court of Justice (whose president also serves as president of the SCM) and the Court of Appeal.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Constitutional Court has the power to determine the constitutionality of laws and official acts and is generally viewed as having exercised this authority independently. Its decisions are often, though not universally, enforced.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The Constitutional Court is the “sole body of the constitutional jurisdiction in the Republic of Moldova” and is formally outside of any governmental branch, including the judiciary. It is “independent of any other public authority and obeys only the Constitution.” CONST. arts. 134(1), 134(2). Its powers include determining the constitutionality of laws and decisions of Parliament, Presidential decrees, decisions and ordinances of the government, and international treaties to which Moldova is a party; interpreting the Constitution; and determining the constitutionality of juridical acts upon notification by the Supreme Court of Justice. Id. art. 135. The Constitutional Court’s jurisdiction to review normative acts is limited to acts adopted after August 27, 1994, the date when the Constitution entered into force. Id. Title VII, art. 1 (2); LAW ON THE CONSTITUTIONAL COURT art. 31(2). Laws and regulations become null and void as soon as the Constitutional Court rules them unconstitutional, and the court’s decisions are final and cannot be appealed. CONST. art. 140.
Access to the Constitutional Court is limited. Only the President of Moldova, the government, the Minister of Justice, the Supreme Court of Justice, the Economic Court, the Prosecutor General, a parliamentary deputy, a parliamentary block, the Parliamentary Advocate (ombudsman), and the National Assembly of Gagauzia can apply to the Constitutional Court for a ruling. LAW ON THE CONSTITUTIONAL COURT art. 25. Individuals cannot do so directly. If during trial a party questions the constitutionality of a relevant law or normative act and the trial court concurs, it will suspend further consideration of the case and propose that the Supreme Court of Justice refer the issue to the Constitutional Court. CIVIL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA art. 11, Law of 26.12.1964, Herald of the Supreme Soviet of S.S.M.R. 36/82 (1964), as further amended [hereinafter CIVIL PROCEDURE CODE]; CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA art. 10, Law of 24.03.61, Herald of the Supreme Soviet of S.S.M.R. 10/42 (1961), as further amended [hereinafter CRIMINAL PROCEDURE CODE]. The Supreme Court of Justice will examine the issue in plenum and may then submit it to the Constitutional Court for decision. LAW OF THE REPUBLIC OF MOLDOVA ON THE SUPREME COURT OF JUSTICE art. 16(c), Law No. 789-XIII of 26.03.1996, M.O. 32-3/323 (1996), last amended by Law No. 951-XV of 04.04.2002, M.O. 66-8/531 (2002) [hereinafter LAW ON THE SUPREME COURT OF JUSTICE]. However, an explanatory decision of the Supreme Court of Justice allows courts of law to avoid this cumbersome process and to apply the Constitution when the court holds that a law adopted before August 27, 1994, is unconstitutional. In these circumstances, the court is required to notify Parliament and the Supreme Court of Justice. DECISION OF PLENUM OF THE SUPREME COURT OF JUSTICE, No. 2 on 30.01.1996. available at http://www.docs.md (1996). The courts of law may also directly apply the Constitution when the constitutional provision does not contemplate adoption of other laws to regulate its applicability. Id.

Most of those interviewed praised the Constitutional Court’s independence and its role in reviewing legislation, while a few asserted that sometimes the judges tend to represent the interests of those who appointed them. However, the Constitutional Court has not been hesitant to hold normative acts unconstitutional. For example, in 2002 the Constitutional Court held the Decision of Parliament on Establishing the Date of General Local Elections, No. 10 on 5.02.2002, unconstitutional to the extent that it shortened the terms of incumbent local officials and required early local elections. DECISION OF THE CONSTITUTIONAL COURT, No. 10 of 19.02.2002, M.O. 33-5/3 (2002).

The execution of a Constitutional Court decision includes the modification or repeal by Parliament of the law found to be unconstitutional. Although laws determined by the Constitutional Court to be unconstitutional are null and void immediately upon issuance of the Court’s decision, there are cases of non-execution of its decisions. For example, during the first half of 2002, the court issued thirty-two decisions, and as of August 5, 2002, twelve were still unexecuted, including decisions on the 1999 Law on Advocates and on amendments to the law on local administration. Infotag News Agency, Constitutional Court Activates Execution of Adopted Resolution (Aug. 5, 2002), available at http://www.infotag.md (copy on file with authors). Before July 18, 2002, there was no special mechanism for enforcement of the Constitutional Court’s decisions, and the only sanction for non-execution of a decision was a small fine. CODE OF CONSTITUTIONAL JURISDICTION OF THE REPUBLIC OF MOLDOVA art 82(1)(c), Law No. 502-XIII, M.O. 53-54/597 (1995). Since that date, public authorities have clearly defined responsibilities regarding execution of those decisions. For example, within three months of publication of a decision of the Constitutional Court, the government must present Parliament with a draft law to amend or repeal any normative act declared unconstitutional, and Parliament is required to consider the draft law on a priority basis. LAW ON THE CONSTITUTIONAL COURT art. 28/1. In addition, both the President and the government are obligated to amend or annul any of their normative acts declared unconstitutional within two months after publication of the Constitutional Court’s decision. Id.
Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are several mechanisms for judicial review of administrative acts. Such legal decisions are generally enforced.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Moldova’s Constitution affords a right to subject administrative acts to judicial review: “Any person whose rights have been violated in any way by a public authority through an administrative ruling or through lack of timely legal response to an application is entitled to obtain acknowledgement of those rights, cancellation of the ruling, and payment of damages.” CONST. art. 53(1). The judiciary’s authority to review administrative acts includes the power to annul administrative acts; require public authorities to act as requested by the applicant; deliver documentation or expunge the record of administrative violations; and to impose damages for delay in enforcing decisions and for the consequences of illegal administrative acts, including failure to respond to a preliminary petition in a timely manner. LAW OF THE REPUBLIC OF MOLDOVA ON ADMINISTRATIVE COURTS arts. 25(1)(b), 25(3), Law No. 793-XIV of 10.02.2000, M.O. 57-8/375 (2000), last amended by Law No. 1163-XV of 27.06.2002, M.O. 100-01/747 (2002) [hereinafter LAW ON ADMINISTRATIVE COURTS]. Specialized administrative law sections in the tribunals, Court of Appeal, and Supreme Court of Justice handle such cases. See Id. art. 6(2). As a result, anyone may seek redress through the appropriate court against infringement of his or her legal rights by a public authority’s administrative act or failure to respond to a petition. Id. arts. 1(2), 2, 14. Final decisions in such cases are sent to the administrative body for execution. Id. art. 32. The head of the public authority can be fined for not timely executing the court’s decision. Id. See Factor 9, infra.

There are other, indirect ways to address the legality of administrative actions. For example, if during a trial the court concludes that its decision will depend on the legality of a normative administrative act issued by a public authority, it may suspend the case and request that an administrative court consider the act. Id. art. 13. Similarly, if in the course of a civil or criminal lawsuit the court becomes aware of a violation of law or of citizens’ rights by a public official or public legal entity, it may issue a corrective order, even though the official or entity is not a party to the lawsuit. CIVIL PROCEDURE CODE art 224; CRIMINAL PROCEDURE CODE art. 54/2. Failure to make a satisfactory response exposes the official to a fine. See Factor 9, infra. A judge who was interviewed reported that although such orders are still issued by courts, they are used less frequently than they were in Soviet times.

With a few exceptions, interviewees reported that in practice courts use their powers to review administrative acts and that the decisions are usually respected and executed by the government. One interviewee reported that in one district court about half of the administrative jurisdiction cases are decided in favor of citizens, and enforcement of such decisions is carefully monitored.
Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>The courts have jurisdiction over cases involving civil rights and generally do an adequate job of exercising such jurisdiction.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Articles 24 through 54 of the Constitution enumerate fundamental rights and freedoms of persons in the Republic of Moldova. These provisions are to be understood and implemented consistent with the Universal Declaration of Human Rights and other conventions and treaties to which Moldova is a party. CONST. art. 4(1). Every citizen has the right to resort to the courts for protection against actions infringing his or her rights and freedoms, and no law may restrict access to justice. Id. art. 20. Moldovan courts have jurisdiction over all cases regarding civil rights and freedoms. See LAW ON JUDICIAL ORGANIZATION art. 4(1). Because Moldova is a signatory to the European Convention on Human Rights, any person, non-governmental organization, or group of individuals whose rights or freedoms have been infringed by a country party to the Convention may also appeal to the European Court for Human Rights, following exhaustion of domestic remedies. EUROPEAN CONVENTION ON HUMAN RIGHTS arts. 34, 35 (Nov. 4, 1950), publ. in 1 TRATATE INTERNATIONALE 341 (Mold.1998), Engl. available at http://www.echr.coe.int/convention/webconveneng.pdf, rat. by Decision No. 1298-XIII of 24.07.1997, M.O. 54-5/502 (1997) [hereinafter ECHR].

Although the legal framework for protection of civil rights appears adequate, protection of these rights in practice is hindered by citizens’ lack of awareness of their rights, their inability to pay the costs of litigation, crowded court dockets, and delays in litigation.

In addition to domestic law, Moldovan courts can apply international norms to protect civil rights. In the event of a conflict between domestic laws and conventions and treaties on human rights to which Moldova is a party, the international agreements prevail. CONST. art. 4(2). However, based on interviews, it seems that the district courts, where most first instance litigation occurs, are often reluctant to apply or cite the ECHR due to lack of familiarity with its provisions, but as judges and lawyers become better acquainted with the ECHR as a result of trainings, interviewees believe that the courts may be more likely to apply it. One interviewee reported that, in any event, judges are usually unfamiliar with interpretive documents of the ECHR that are based on the case law of the European Court for Human Rights.

Justice is to be administered only by courts of law; that is, by the Supreme Court of Justice, the Court of Appeal, the tribunals, and the district courts. CONST. arts. 114, 115(1). Although specialized courts may be established to hear certain categories of cases, such as the economic courts, extraordinary courts are forbidden. Id. art. 115(3). Military courts are included in the category of specialized courts. They are a component part of the judicial system and are charged with administering justice within the armed forces. LAW ON THE MILITARY COURTS art. 1. The jurisdiction of such courts is generally limited to criminal offenses by members of the National Army and claims by civilians for compensation. Id. art. 4. Decisions of military courts may be reviewed by special sections of the Court of Appeal and the Supreme Court of Justice, which are a part of the military court system, acting as appellate, cassation, or even first instance courts. Id. art. 5.
Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial decisions may be reversed only by the judicial appellate process. It is too soon to evaluate the effect of recent changes in the court system; further changes may result when anticipated procedural codes are adopted.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Moldova’s Constitution guarantees the right to appeal judicial decisions: “The parties involved in a case and the state authorities may appeal against decisions pronounced by the courts of law in accordance with the law”. CONST. art. 119. Furthermore, judicial decisions may be appealed only through the judicial appellate process. See ld. arts. 114 (justice administered only by courts of law), 115 (extraordinary courts forbidden). Those interviewed confirmed that in practice the legal provisions regarding the appellate process are enforced.

Procedures for review of judicial decisions are specified in the Civil and Criminal Procedure Codes. Procedural rules provide for ordinary review and extraordinary review of judicial decision. The ordinary procedures to review a decision are by an appeal, in which the reviewing court may re-evaluate the facts and application of the law, and by the more limited cassation, in which the reviewing court may generally only consider application of the law to the facts. Before 1996, when appellate review became possible, the only way to seek review of a judicial decision was by cassation. See LAW ON JUDICIAL ORGANIZATION arts. 30(b), 36(b). Judicial decisions can also be reviewed in extraordinary circumstances, that is, after a judicial decision has become final and the period for ordinary review has expired, by four procedures: (1) annulment contestation; (2) reconsideration of the decision; (3) intervention to establish uniformity in the application of the law when different courts have decided the same legal issue differently; and (4) annulment cassation. CIVIL PROCEDURE CODE arts. 317, 325, 331-33; CRIMINAL PROCEDURE CODE arts. 351, 363, 369/1, 369/6.

Moldova presently has a four-tiered judicial system mandated by the Constitution. See CONST. art 115(1). The intent of the November 2002 amendment (see supra n.2) is to improve the efficiency of the judicial process; however, interviewees expressed different opinions about this measure. Although most believed it would simplify appellate review by eliminating the tribunals, reduce costs, and facilitate better citizen access to the Supreme Court of Justice, others argued that there had not been sufficient time to consider the efficiency of the four-tiered system before the amendment was passed. One interviewee stated that these changes would not reduce the time for review or increase efficiency.
Factor 9: Contempt/Subpoena/Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
</table>
Although courts appear to have adequate subpoena, contempt, and enforcement powers, in practice their ability to exercise such powers is limited by lack of resources, such as the government's failure to establish judicial police. The large number of unenforced judgments is a significant problem.

Analysis/Background:

Moldovan law gives judges both contempt and subpoena powers. They have legal authority to control the behavior of persons in their courtrooms and to punish individuals for contempt. Anyone disturbing a court session is first entitled to a warning and then can be removed from the courtroom if he or she continues the disturbance. The court may postpone examination of a case or may simply remove parties or other persons who disturb the proceedings and fine those who show disrespect to the court. A prosecutor or an advocate who fails to comply with orders of the president of the session is entitled to a warning and, if he or she still fails to comply, the court may postpone the examination until the prosecutor or advocate can be replaced. The court will also notify the hierarchically superior prosecutor or the Bar Council’s Commission for Ethics and Discipline, as appropriate, of the contempt. LAW ON THE LEGAL PROFESSION arts. 41, 48, Law No. 1260-XV of 19.07.2002, M.O. 126-27/1001 (2002); CIVIL PROCEDURE CODE art. 150. The Commission for Ethics and Discipline is empowered to review cases of violations by lawyers of the Lawyers’ Code of Ethics and to issue a warning or a reprimand after requisite hearing procedures. Any such disciplinary action expires one year after issued if the sanctioned lawyer does not commit further violations. LAW ON THE LEGAL PROFESSION arts. 41, 48, 49, 50. Persons who show disrespect to the court or to its rules can also be held administratively liable and fined or even be subjected to administrative arrest up to fifteen days. CODE OF THE REPUBLIC OF MOLDOVA ON ADMINISTRATIVE OFFENSES art. 200/7, Law of 29.03.85, Herald of the Supreme Soviet of S.S.M.R. 3/47 (1985), as further amended [hereinafter CODE ON ADMINISTRATIVE OFFENSES].

However, there are some practical limitations to the exercise of this authority. Moldovan law provides for judicial police, whose responsibilities include maintaining public order in court, compelling the attendance of parties and witnesses, and assisting judicial executors. See CONST. art.121(3); LAW ON JUDICIAL ORGANIZATION art. 50. However, despite the statutory and constitutional provisions, the judicial police have not yet been established. Judges interviewed stated that this is a serious problem, because judges lack the means to enforce their authority in the courtroom or to protect themselves. One judge described a divorce case in which the husband struck his wife during a hearing, because there had been no one to prevent him from doing so.

Judges also have ample legal authority in both civil and criminal cases to compel the attendance of witnesses and require the production of documents or other evidence. See CIVIL PROCEDURE CODE arts. 101-107 (subpoenaing participants), 67 (production of documents), 73 (production of other evidence); CRIMINAL PROCEDURE CODE arts. 56 (production of evidence), 58 (subpoenaing witnesses). A witness who does not appear in response to a subpoena without adequate grounds can be fined, and the court can order the police to bring the witness to court by force. CIVIL PROCEDURE CODE art. 65; CRIMINAL PROCEDURE CODE arts. 59, 228/1. When a participant fails to appear for a hearing in a civil case without informing the court or providing a satisfactory reason for the participant's absence, the court will conduct the hearing in the participant's
absence. **CIVIL PROCEDURE CODE** art. 158. When the participant is a party who was notified of a hearing but fails to appear without informing the court of a satisfactory reason or requesting that the hearing be conducted in his or her absence, the court shall dismiss the case when the plaintiff fails to appear or conduct the hearing in the defendant’s absence if he or she fails to appear. **CIVIL PROCEDURE CODE** art. 159. When a criminal defendant fails to appear, the court must suspend the hearing and can order the police to bring the defendant to court by force. **CRIMINAL PROCEDURE CODE** art. 239. Although police generally execute judicial orders compelling the attendance of witnesses, some interviewees reported that they are occasionally reluctant to do so and justify such failure by lack of personnel or means of transportation.

Despite having legal authority to compel the attendance of parties and witnesses, courts often fail to issue subpoenas in accordance with procedural requirements because they lack sufficient resources to do so. For example, courts often mail subpoenas as ordinary letters, because they cannot afford the increased postage for letters requiring proof of receipt. There is then no evidence that the recipient was properly summoned, leading to abusive failures to appear and delays when participants simply declare that they had not been summoned. In such circumstances, judges usually suspend hearings, both because they lack evidence to do otherwise and because improper notice can be a basis for challenging a judgment in annulment. See **CIVIL PROCEDURE CODE** art. 317. Sometimes parties and other participants have had to pay for telegrams to other parties to ensure that they are properly summoned.

The large number of unexecuted civil judgments in Moldova is a serious problem, which one respondent described as “discrediting justice”. At present there are about 55,000 such judgments, some dating back to 1990. In some cases, of course, the legal system is not to blame for these unexecuted judgments, as when the defendant lacks sufficient funds or property to satisfy the judgment. It should be noted that the courts themselves are not presently directly responsible for the enforcement of judgments.

In civil cases, the party against which a final judgment is rendered is expected to comply voluntarily. Ordinary citizens who fail to do so face an administrative fine, while officials who do not comply are subject to a substantially greater fine. **CODE ON ADMINISTRATIVE OFFENSES** art. 200/11. If a judgment debtor fails to comply with the judgment, the court will, at the plaintiff's request, issue an enforcement letter. This authorizes judicial executors in the appropriate territorial subdivision of the Department for Execution of Judicial Decisions to enforce the judgment. **CIVIL PROCEDURE CODE** art. 347. This department, subordinated to the MOJ, was created in 2002 as a separate state agency to improve the effectiveness of judicial executors and is responsible for the execution of all civil court decisions. **DECISION OF THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA ON APPROVAL OF THE REGULATION AND STRUCTURE OF THE DEPARTMENT FOR EXECUTION OF JUDICIAL DECISIONS, No. 312 of 15.03.2002, M.O. 40-42/385 (2002).** It is too early to judge how effective the department will be in improving the execution of civil judgments. One judge reported in early July 2002, for example, that no territorial subdivision of the department had been created for his district court, with the result that the president of the court was still responsible for supervising enforcement of judgments. It is reported that judgments against public authorities are sometimes difficult to execute, because of a claimed lack of funds or other reasons, such as possible political influence.

By contrast, there appear to be few problems with the execution of judgments in criminal cases. The president of the court sends an order for execution of the judgment and a copy of the sentence to the entity responsible for enforcing the sentence and then is required to verify execution of the sentence. **CRIMINAL PROCEDURE CODE** art. 339.
III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>The judiciary has few opportunities to influence the amount of money appropriated to it by the legislature or to control administration of those funds.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

With the exception of the Supreme Court of Justice, the economic courts, and the Constitutional Court, all of which have their own separate line items in the budget, the SCM is responsible for proposing a draft budget for all other courts. LAW ON THE SCM art. 4(n). This draft budget is reviewed by the Ministry of Finance and is usually significantly reduced before approval by Parliament, often without regard to the views or financial needs of the judiciary. Parliament has final authority to approve the budget for these courts, and the state budget includes a single line-item for the district courts, tribunals, and the Court of Appeal. Once the budget is approved, the MOJ controls administration of the funds appropriated for these courts. The MOJ not only distributes money to the district courts, tribunals, and the Court of Appeal, but also supervises the expenditure of these funds. DECISION OF THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA ON THE MINISTRY OF JUSTICE art. 8(32), No. 129 of 15.02.2000, M.O. 19-20/210 (2000) [hereinafter DECISION ON MINISTRY OF JUSTICE].

It is reported that the budget for these courts has never been approved in accordance with the judiciary’s needs and the SCM’s requests. As a result, all these courts, especially the district courts, are chronically under-funded. Funds appropriated to the courts are inadequate to cover the essential needs of the courts for the proper administration of justice. One interviewee asserted that sometimes the funds provided by Parliament for a year are insufficient for more than nine months of operation, with the result that additional appropriations are necessary. Presidents of local courts must importune the MOJ for funds to satisfy the most elementary needs, such as paper, envelopes, and stamps. Interviewees reported that sometimes presidents of courts have had to solicit funds from “sponsors,” such as directors of private companies, an expedient that raises concerns about conflicts of interest. Many of those interviewed contended that the present financial situation of the courts and the method for administration of their budget constitute the gravest threat to the judiciary’s independence and efficiency.

The Supreme Court of Justice and the economic courts are in a better position, because they have their own separate line items in the state budget and control the funds appropriated to them. For example, the Supreme Court of Justice submits a budget request to Parliament for approval. LAW ON THE SUPREME COURT OF JUSTICE arts. 27(1), 27(2). Both the Republican and Chisinau Economic Courts have a single budget, administered by the Republican Economic Court through its accounting department. See LAW ON THE ECONOMIC COURTS arts. 25(2), 28(1). The Constitutional Court also has influence over its budget, which is a separate line item in the state budget. It submits a draft budget to Parliament for approval, following preliminary review by the Ministry of Finance. LAW ON THE CONSTITUTIONAL COURT art. 37. However, approval is by no means assured, and it was reported that the Constitutional Court must vigorously defend the
funding it seeks. Nevertheless, it is fortunate to have the opportunity to do so, which many of the other courts lack. The Constitutional Court directly controls its expenditures.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
</table>

Although Parliament recently increased judicial salaries, they are still inadequate, making it difficult to attract and retain qualified judges.

Analysis/Background:

Virtually all those interviewed agreed that judicial salaries in Moldova are without question inadequate and do not correspond to the complexities and responsibilities of a judge’s work. Some interviewees even said that the present level of judicial salaries is an insult to judges and practically forces them to seek other sources of income, thereby encouraging corruption. A judge’s compensation consists of a base salary and various supplements, which may represent a significant percentage of the judge’s total salary. The base salaries of judges are a fixed percentage of the base salary of the President of Moldova. For example, the base salary of the president of the Supreme Court of Justice is 90% of the base salary of the President of Moldova. The base salaries of other judges of the Supreme Court of Justice are, in turn, 90% of the base salary of the president of Supreme Court of Justice. The base salaries of the presidents of lower courts are 90% of the salary of the president of the immediately superior court, and the salary of other judges cannot be less than 90% of the salary of the president of his or her court. See LAW ON JUDICIAL STATUS art. 28(5). In addition to their base salaries, judges can receive supplements based on various measures of competence, such as having been awarded qualification degrees (see Factor 15, infra), years of service, speaking two or more languages, and holding an advanced academic degree. Id. art. 28(1). The amounts of these supplements are established by Parliament. Id. art. 28(2).

In 2001, the average monthly salary plus supplements for entry-level judges of district courts was MDL 735 (about $52.50), for judges of tribunals MDL 980 (about $70), for judges of the Court of Appeal, MDL 1,230 (about $95), and for judges of Supreme Court of Justice MDL 1,555 (about $111). SCM 2001 REPORT. More telling than converting these salaries to United States dollars is comparing them with the estimated minimum consumer budget (an estimate of the amount of living expenses for one person), which was MDL 1,086 (about $80) per person for the month of July 2002. Infotag News Agency, Consumer Price Indices for the First Seven Months of 2002 Collated (Aug. 16, 2002), available at http://www.infotag.md (copy on file with authors). Some interviewees noted that the salaries of some judges were less than those of prosecutors or policemen.

In an attempt to address this problem, Parliament significantly increased the average monthly salary by increasing the amount of supplements to judges’ salaries effective October 1, 2002. DECISION OF THE PARLIAMENT OF THE REPUBLIC OF MOLDOVA ON AMENDING AND COMPLETING PARLIAMENT’S DECISION NO. 453-XIII OF 16 MAY 1995 ON THE REMUNERATION OF MEMBERS AND EMPLOYEES OF THE SUPREME COURT, JUDGES AND EMPLOYEES OF THE COURTS, PROSECUTION AND ARBITRAGE COURTS, NO. 1281-XV of 25.07.2002, M.O. 115-116/939 (2002). It is estimated that
the monthly salary of the president of the Supreme Court of Justice would increase to MDL 4,500 (about $321), the president of the Court of Appeal to MDL 3,900 (about $279), and presidents of district courts to MDL 3,000 (about $214). Infotag News Agency, *Parliament Gives Judges Pay Rise* (July 26, 2002), available at http://www.infotag.md (copy on file with authors). Compared to the prior level of remuneration, this represents an almost three-fold increase. Although this increase is welcome, judicial salaries are still inadequate for judges to support their families and live in a reasonably secure environment.

By law, judges are also entitled to housing of a prescribed size. If a new judge does not have such a residence, the local public administration authority must provide him or her with one, either an apartment or a house, within six months. *Law on Judicial Status* art. 30(1). After ten years of service, the judge is entitled to outright ownership of the residence without cost. *Id.* art. 30(2). Furthermore, until the judge is provided with a dwelling place, he or she is entitled to compensation for renting a temporary residence. *Id.* art. 30(3). In practice, however, most public authorities fail to comply with these requirements, because of lack of available dwellings and money to provide a residence or pay compensation to the judge.

### Factor 12: Judicial Buildings

*Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Some courthouses lack sufficient courtrooms or deliberation rooms, forcing judges to conduct trials in their offices. Lack of funding has prevented some courts from paying utility charges, forcing them to operate without electricity, running water, and even heat in the winter.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Courthouses in Moldova are generally conveniently located in central areas of cities and towns and are relatively easy to find. However, most of the buildings themselves are old and in need of repair. It is reported that no new courthouses were built during the past decade, and funds were available only for capital renovation of the Court of Appeal and some tribunals. The tribunals, which were established following independence, and the Court of Appeal are housed in buildings previously used for other purposes, such as administrative or educational buildings or even a dormitory, in the case of the Comrat Tribunal. Because many courthouses were not designed to be used for that purpose, they lack sufficient courtrooms or deliberation rooms. As a result, judges of many district courts and the economic courts are forced to hold hearings in their offices, which are frequently too small to accommodate the parties, let alone members of the public or media. These offices are not proper places for dispensation of justice. One lawyer commented that judges often decide cases in their offices, not in deliberation rooms as the law requires, and that they can easily be distracted, if not influenced, by the telephone. Responsibility for providing the courts with buildings lies with the government, acting through local public administration authorities. *Law on Judicial Organization* art. 23(3).

Because of insufficient operating funds, some courts have been unable to pay for utilities. Consequently, electricity, running water, or even heat during the winter have been cut off. One judge reported having to use a flashlight to search files in the archive when the MOJ failed to provided money to pay for electricity. Although that may be an extreme instance, it illustrates the serious problems many courts face in dispensing justice.
Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges receive police protection only in rare instances. Most courthouses have no guards or police to provide security, and those that do lack sufficient numbers of guards or police.</td>
<td></td>
</tr>
</tbody>
</table>

Conclusion:

Judges receive police protection only in rare instances. Most courthouses have no guards or police to provide security, and those that do lack sufficient numbers of guards or police.

Analysis/Background:

Judges and their families have a legal right to police protection for themselves and their property. LAW ON JUDICIAL STATUS art. 27(1). In practice, however, most judges reported that they receive almost no protection at all. One prosecutor admitted that personal protection is rarely provided when a judge is threatened; and protection is only given if there is an obvious danger to the judge’s life and the judge files a request with the police. Interviewees described rare instances of assaults on judges and more frequent instances of threatening or intimidating judges, especially over the telephone. Furthermore, because of limited security at the vast majority of courthouses, persons who are dissatisfied with a judge’s decision may easily enter the judge’s office to insult or threaten him or her. Reportedly, judges who are concerned about their personal safety may request to be provided with a gun.

Though both the 1994 Constitution and the Law on Judicial Organization contemplate the establishment of judicial police responsible for protecting courthouses and court property, controlling entry into and exit from courthouses, ensuring the security of judges, and maintaining public order in the courthouse and during judicial proceedings these legal provisions have not been yet realized into practice. See CONST. art. 121(3); LAW ON JUDICIAL ORGANIZATION art. 50.

The security of courthouses varies depending on the level of the court. In criminal courtrooms, the defendant is accompanied by an armed policeman and might be kept behind bars during the court session. The majority of courtrooms, especially at the district court level, do not have any guards or police to provide protection. One interviewee pointed out that most private companies are better protected than courthouses, since they typically have guards. Another described a hearing in which someone accidentally dropped a gun on the floor. Although no one was injured, it illustrates the courts’ vulnerability. The situation is aggravated when hearings are held in a judge’s office, since there is little distance separating the judge and parties.

Some courts, including the Supreme Court of Justice, the Court of Appeal, the Chisinau Tribunal and the economic courts, all located in Chisinau, as well as the Balti District Court have a police officer at the entrance, although there are no metal detectors. In addition, at the Supreme Court of Justice visitors are expected to obtain a permit (over the telephone) and leave identification with the guard. Once past the police officer, however, visitors have free access to courtrooms or judges’ offices. One judge complained that it is not sufficient to have only one guard for a five-story building.
IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>After an initial five-year appointment, judges are eligible for re-appointment until the mandatory retirement age. However, recent actions by the President have led to concerns about the role that political considerations play in such decisions, and the lack of transparency in the process is the principal concern.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Judges for all courts of law are initially appointed for a five-year term, and thereafter they may be reappointed for a “life” term until the mandatory retirement age of sixty-five years. CONST. art. 116(2); LAW ON JUDICIAL STATUS, art. 11(1). Before a judge is appointed for life tenure, he or she must pass an attestation examination administered by the Qualification Board, be recommended by the Qualification Board for reappointment, and then be proposed by the SCM to the President of Moldova. LAW ON JUDICIAL STATUS art. 11(1); LAW ON QUALIFICATION BOARD art. 23(3)(b), 25(3)(a). The President of Moldova appoints judges for life tenure, except judges of the Supreme Court of Justice, who are appointed by Parliament. CONST. art. 116(2), (3); LAW ON JUDICIAL STATUS art. 11. Sitting judges are "irremovable under the law". CONST. art. 116(1); but see Factor 17, infra. Furthermore, a judge may be transferred to another court for an indefinite period only with his or her consent. LAW ON JUDICIAL STATUS art. 20.

Judges of the Constitutional Court are appointed for a fixed six-year term. CONST. art. 136(1). Unlike judges of courts of law, they may not be appointed with life tenure, but may be reappointed to the Constitutional Court for no more than one additional term. LAW ON THE CONSTITUTIONAL COURT art. 5(2).

Those interviewed generally agreed that senior judges, appointed through the mandatory retirement age of sixty-five, do in fact enjoy guaranteed tenure. They can continue to serve as judges until they resign or are removed for causes established by law.

According to information provided by the SCM, as of July 1, 2002, there were 347 judges in Moldova, of whom 248 had been appointed for life terms. In 2001 through mid-2002, the SCM nominated 150 judges for appointment with life tenure, some of whom had already served more than one year after the expiration of their initial five-year term. Of these 150 judges, the President of Moldova appointed ninety-seven judges with life tenure and rejected forty-six. As of July 2002, the President had not acted on the other seven judges recommended for life tenure. The SCM then re-nominated forty-two of the forty-six previously rejected by President; the President appointed fifteen of them. Superior Council of Magistracy, Informative Note on Examination of Materials for Appointment of Judges through the Retirement Age, 24.07.2002 (copy on file with authors) [hereinafter SCM Informative Note on Appointment of Judges]. These events suggest that the SCM is at least independent to some degree and is sometimes able to persuade the President to reconsider his rejection of nominees.
Many of those interviewed referred to this situation as evidence that judges had been unlawfully “fired” on the basis of political considerations. Some even asserted that the President had had a supplementary investigation of candidates undertaken by various state agencies to learn about the candidates’ property, political affiliation, etc., and that if the investigation raised suspicions the candidates were not re-appointed. If interviewees were correct that such an investigation took place, it could, of course, have been directed at uncovering evidence of corruption as well as political incompatibility. The only conclusion one can safely draw about the reappointment process is that lack of transparency breeds suspicions about the motives behind the President’s decisions. The President has no legal obligation to give reasons for his decisions, and because neither those interviewed nor the judges themselves knew why the President did not reappoint some judges, many assumed the worst.

Factor 15: Objective Judicial Advancement Criteria

*Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although Moldovan law contains objective criteria for advancement, as well as a board responsible for determining whether candidates for advancement satisfy those criteria, serious questions have been raised in connection with implementation of recent legislation regarding the presidents and vice presidents of courts.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Judicial advancement can occur in three ways: appointment to the administrative position of president or vice president of a court; appointment to a higher court; or award of a higher qualification degree (which may also occur in connection with the other two). All three require attestation by the Qualification Board. *Law on Qualification Board* art. 23(3). Attestation is the process by which the Board examines the professional qualifications, integrity, and performance of a judge.

Based on a judge’s attestation, the Qualification Board will issue an opinion on his or her proposed appointment as president or vice president of a court or promotion to a higher court. *Law on Qualification Board* art. 25(3). As discussed under Factor 1, *supra*, candidates for promotion to a higher court must have at least five years of judicial experience for appointment to a tribunal, seven years for the Court of Appeal, and fifteen years for the Supreme Court of Justice. *Law on Judicial Status* art. 7(2).

The law requires advancement to be based on competition. *Law on Judicial Status* art. 20(1). Interviewees were divided in their opinions on the real reasons for advancement within the judiciary. Many indicated that both professionalism and cronyism are important factors in judicial advancement.

Many have strongly criticized recent appointments of court presidents and vice-presidents following the enactment of legislation by the communist government. Parliament amended the Law on Judicial Organization to provide that beginning October 5, 2001, presidents and vice presidents of district courts, tribunals, and the Court of Appeal would be appointed for four-year terms instead of indefinite terms, as was the case previously. *See Law on Judicial Organization* art. 16(3). A subsequent implementing law made this amendment retroactive, with the result that presidents and vice-presidents who had served more than four years as of October 5, 2001, were
deemed to have held four-year appointments that had expired. (Even though a judge might cease to be president or vice president of the court, he or she could still continue as a judge of that court). The SCM was charged with selecting candidates for the resulting vacancies, and the President of Moldova with appointing new presidents and vice presidents. See Law on Application of Article 16 of Law No. 514-XIII of July 6 1995 on the Organization of the Judiciary, Law No. 583-XV of 25.10.2001, M.O. 131-32/993 (2001). The law was challenged in the Constitutional Court, but it was held constitutional. Decision of the Constitutional Court No. 26 of 23.05.2002, M.O. 71-3/16 (2002).

According to information from the SCM, following enactment of the amendment, eighteen court presidents were reappointed and twenty-two new court presidents were appointed. In addition, new presidents were appointed to fill existing vacancies in two courts, and six sitting presidents of other courts remained in office because they had served for less than four years. As of October 2002, further appointments were still needed. Superior Council of Magistracy, Informative Note on Appointing Presidents and Vice-Presidents of the Courts, 24.07.2002 (copy on file with authors).

Another change from prior practice was that the SCM recently began to nominate several candidates for a single position, instead of only one. The President then selects one or rejects them all. Some interviewees described this as abdication by the SCM of its responsibility to select candidates for judicial appointment and by others as an attack on judicial independence by the executive. Still others, however, argued that the practice of proposing three candidates is not illegal, because the law requires advancement to be based on competition, but it does not provide detailed procedures.

Judges may be awarded a qualification degree based on their position, years of service, work experience, and level of professional expertise. The Qualification Board (or in some cases the SCM) awards the first five levels of qualification degrees and the President of Moldova awards the highest degree, the superior qualification degree. Law on Qualification Board art. 27(2). Qualification degrees are awarded for a limited number of years ranging from two to five years, after which the judge can be considered for a higher degree. Id. art. 29.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges have broad immunity from criminal, civil, and administrative liability, as well as from arrest and investigation.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Moldovan law affords judges far reaching immunity from civil, criminal, and administrative liability, as well as immunity from arrest and investigation. Interviewees uniformly reported that such immunity is respected in practice.

By law, a judge “shall not be held liable for his opinions expressed while exercising his functions, as well as for judgments he passed unless he has been found guilty of criminal abuse by a final sentence.” Law on Judicial Status art. 19(3). However, the state is subject to material (pecuniary) liability for any prejudice or injury caused in lawsuits through judicial error. Const. art. 53(2).
Judges' criminal liability is also quite limited. A judge may be punished only for deliberate issuance of an illegal sentence, decree, conclusion, or decision. CRIMINAL CODE art. 307, Law No. 985-XV of 18.04.2002, M.O. 128-29/1012 (2002). Significant procedural safeguards against abusive criminal prosecutions exist. Even a criminal proceeding unrelated to the judge’s official responsibilities may be instituted only by the Prosecutor General with both the consent of the SCM and either the President of Moldova or Parliament (depending upon whether the President or Parliament appointed the judge). LAW ON JUDICIAL STATUS arts. 19(4), 19(5).

Judges are also immune from liability for administrative offenses, even those unrelated to the judge’s official functions, such as speeding or other traffic violations. Before the Law on Judicial Status was amended in 2001, judicial immunity regarding administrative offenses was unrestricted. Presently, a judge can be administratively sanctioned by a court of law, but only if the SCM consents. Id. art. 19(7).

Judges have considerable immunity against actions by investigative authorities. For example, a judge cannot be detained, brought by force, or arrested without the consent of both the SCM and the President of Moldova or Parliament, as appropriate. Id. art. 19(5). Absent such authorization, a judge detained on suspicion of having committed an offense must be released immediately after establishing his or her identity. Id. In addition, the consent of the Prosecutor General is required to arrest a judge. Id. Entry or search of a judge’s dwelling, office, or vehicle; search of the judge him- or herself; interception of the judge’s telephone calls; or control and sequestration of correspondence, goods, and personal documents is allowed only with the Prosecutor General’s consent when criminal proceedings have been instituted, or with a court order. Id. art. 19(6).

Judges of the Constitutional Court are entitled to immunity from detention, arrest, or search, except in the case of flagrant criminal offenses. They cannot be tried for criminal or administrative offenses without the prior approval of the Constitutional Court. LAW ON THE CONSTITUTIONAL COURT art. 16(1).

**Factor 17: Removal and Discipline of Judges**

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges may be disciplined or removed from office for specified reasons that are reasonably objective. Procedures for discipline or removal are transparent and give judges accused of misconduct an opportunity to defend themselves.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

The Disciplinary Board under the SCM is responsible for examining cases of judicial misconduct. LAW ON THE DISCIPLINARY BOARD AND ON DISCIPLINARY LIABILITY OF JUDGES art. 1(1), Law No. 950-XIII of 19.07.1996, M.O. 61-2/607 (1996), last amended by Law No. 1099-XV of 06.06.2002, M.O. 100-01/741 (2002). It consists of twelve members, including a president and deputy president, with three each elected from the Supreme Court of Justice, the Court of Appeal, the tribunals, and the district courts. Id. art. 2(1).

The specific grounds for disciplining a judge are:
• Serious or systematic violation of the Judicial Code of Ethics;
• Serious violation of legislation (including procedural and substantive law) while administering justice;
• Disclosure of confidential proceedings, including deliberations;
• Negligent failure to complete a case in a reasonable time, resulting in violation of the right to a fair trial;
• Violation of work discipline;
• Violation of a prohibition against holding other offices or engaging in other activities while a judge; and
• Public activities of a political character.

Id. art. 9(1). However, annulment or amendment of a judicial decision by higher court is not a basis for discipline, except when the judge responsible for the decision deliberately decided the case contrary to law, or did so negligently and caused substantial damages. Id. art. 9(2).

Three or more members of the SCM may initiate disciplinary proceedings against a judge of the Supreme Court of Justice, a member of the SCM, or a member of the Disciplinary Board; in all other cases, any member of the SCM or the president of the Supreme Court of Justice may initiate proceedings against a judge. Id. arts. 10, 12(2). Before the proceeding is initiated, however, an inquiry must be made to verify that grounds for discipline exist, and the judge must be given an opportunity to provide a written explanation. Id. art. 12(1). The judge is also entitled to be notified of the materials on which the disciplinary proceeding will be based, to have an opportunity to provide an explanation of those materials, to present evidence, and to request additional verification. Id. art. 12. At the examination of a disciplinary case, which must occur within one month after it is initiated, the judge has a right of full participation. Id. arts. 17(1), 18(3).

The Disciplinary Board may impose a range of sanctions including a reprimand, reproof, severe reproof, and recommendation of dismissal. Id. art. 19(2). During the first half of 2002, the Disciplinary Board examined seven cases, issuing reprimands in three cases and reproofs in two cases. The remaining two were closed without imposing any sanction. Superior Council of Magistrates, Informative Note on Petitions Addressed to the Superior Council of Magistracy During the First Half of 2002, 24.07.2002 (copy on file with authors) [hereinafter SCM Informative Note on Petitions]. Absent an appeal to the SCM, the Disciplinary Board will transmit its decision to the SCM, which can approve or modify the decision, reject and issue a new decision or reject the decision and end the inquiry. LAW ON THE SCM art. 21. Interviewees reported that the process for discipline of judges is generally fair.

Depending upon how a judge was appointed, the President of Moldova or Parliament, as appropriate, may remove the judge from office on the proposal of the SCM. See LAW ON JUDICIAL STATUS arts. 25(1), 25(2). Specific grounds for removal are:

• Serious or systematic disciplinary misconduct;
• Refusal to take the oath of office or violating it;
• Grave or systematic violation of the Judicial Code of Ethics;
• Conviction of a crime;
• Failure to meet the conditions for appointment to office;
• Loss of Moldovan citizenship;
• Insufficient professional qualification (determined at attestation);
• Violating a prohibition against holding other offices or engaging in other activities while a judge;
• Elimination or reorganization of the judge’s court if he or she refuses to be transferred to another one;
• Ill health resulting in long-term inability to perform judicial functions; and
• Entry of a final judgment establishing the judge’s limited legal capacity or incapacity.

\textit{Id.} art 25(1). Five judges were removed from office for violations of article 25 of the Law on Judicial Status during the first half of 2002. SCM, Informative Note on Appointment of Judges.

The grounds and procedures for removal and discipline of judges of the Constitutional Court differ somewhat from those described above for courts of law. Grounds for removal of a Constitutional Court judge from office are inability to exercise judicial authority for more than four months due to ill health, violation of the judge's oath or obligations, conviction of a criminal offense, and an incompatibility (i.e., violating a prohibition against holding other offices or engaging in other activities while a judge). \textit{Law on the Constitutional Court} art. 19(1). The Constitutional Court itself has authority to decide on issues of removal of its judges. \textit{Id.} art. 19(2). A panel of two judges appointed by the President of the Constitutional Court is responsible for investigating the facts in cases of alleged infringement of a judge’s obligations and oath. \textit{Id.} art. 19(3).

\textbf{Factor 18: Case Assignment}

\textit{Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.}

\begin{center}
\begin{tabular}{|l|l|}
\hline
\textbf{Conclusion} & \textbf{Correlation: Negative} \\
\hline
Because the law does not provide for an impartial and transparent method of case assignment, court presidents are free to assign cases on whatever basis they wish and could do so on improper subjective grounds. \\
\hline
\end{tabular}
\end{center}

\textbf{Analysis/Background:}

The president of a court has authority to assign cases to judges of that court. \textit{Law on Judicial Organization} art. 27(1)(a). Because the law does not specify a method or any criteria for case assignment, presidents have discretion to assign cases however they choose, even if procedures for case assignment are in place.

There is no uniform practice for assignment of cases in Moldova. Some lower courts use the territorial principle for assigning civil cases, by which each judge is allotted a specific region within the territorial jurisdiction of the court. When cases arise within a judge’s region, the president of the court routinely assigns them to that judge. In other courts judges are assigned a day “to serve on duty,” during which they meet with citizens and review their applications to commence a lawsuit. After the pleadings are registered, the president assigns to each judge the cases brought while that judge was on duty. In courts where judges have developed specializations (e.g., family law, cases involving juveniles, or bankruptcy law), they are typically assigned cases within their areas of expertise. Cases in the Court of Appeal are assigned by drawing of lots. However, as noted above, none of these procedures are binding on the court presidents, and they can assign cases using other procedures.

Criminal cases are usually assigned based on considerations such as the workload of individual judges, complexity of the case, and expertise of particular judges.

Many of those interviewed expressed dissatisfaction with the lack of a mandatory impartial and transparent method for case assignment, because of the potential for abuse it allows. They believe that in practice some cases are assigned on a subjective basis incompatible with an
impartial trial. For example, some presidents may assign cases to “comfortable” judges. It was also reported that occasionally judges directly ask the president to assign them a particular case.

**Factor 19: Judicial Associations**

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although a judicial association exists, it has neither been particularly active nor effective.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Judges in Moldova have a legal right to create and be affiliated with trade unions or other organizations to represent their interests, improve their professional skills, and defend their status. Law on Judicial Status art. 14(3).

The National Association of Judges from Moldova (NAJM) was created in 1994 as a non-governmental, non-political, voluntary, autonomous association of judges. According to its bylaws, its primary purposes are to "consolidate the efforts of judges in order to protect their rights and interests, to improve the system of justice and the professionalism of judges, to guarantee and ensure on behalf of the state the independence of the judiciary according to the Basic Principles for the Independence of Judiciary, as recommended by the General Assembly of the UN through its resolution no. 40/146 on December 13, 1985, and as also provided by the Universal Declaration on Human Rights." National Association of Judges from Moldova, Bylaws of the Association of Judges from the Republic of Moldova (Mar.17, 1999), THEMIS, SPECIAL EDITION (n.d.).

Contradictory opinions were expressed regarding NAJM’s activity. Many interviewees were grateful for its existence, but admitted that it was ineffectual. NAJM publishes Themis, a magazine on legal issues, but its activity beyond this is limited to raising issues in connection with judicial independence and strengthening the status of judges. NAJM has been ineffective in its efforts to influence the government or Parliament effectively. Noting the antipathy between the present governmental authorities and NAJM’s leadership, one interviewee said that NAJM’s proposals were more likely to have been considered before 2001, but now they are ignored. Some even contended that the government used its powers to award tenure and appoint judges to leadership positions vindictively against NAJM officials in 2001-02.

Some interviewees, on the other hand, criticized NAJM’s leadership. One pointed out that they failed to take any action to protect the interests of the judiciary when almost one-third of the judges in office had completed their initial five-year terms and were overdue for tenured appointment. Only after some NAJM leaders were not reappointed, it was suggested, did they take an active interest in such issues. Another argued that NAJM fails to take advantage of its potential authority in such matters as judicial ethics and, furthermore, that although it is a potentially influential organization, with 90% of the judges as members, its leadership should be more objective and protect the interest of all judges, not just a minority of them.
V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

*Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although difficult to quantify, bribery of judges is reported to occur in Moldova. Instances of political pressure on the courts are also reported.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Both interference with the administration of justice as well as paying or accepting a bribe constitute criminal offenses. *Criminal Code* arts. 303, 324, 325. Under Rule 3 of the Judicial Code of Ethics, judges have a duty when considering cases not to be influenced by “any governmental or administrative institutions, public opinion, the media, or any other person.” Conference of Judges (Feb. 4, 2000), *Judicial Code of Ethics, Bulletin of the Supreme Court of Justice*, No. 3 (2000). Nevertheless, interviewees generally admitted the existence of bribery and other improper influences on judges, though they disagreed on the extent of such practices. By their very nature, the effect of corruption and improper influence on judicial decisions is difficult to quantify, but the belief that they do exist seriously undermines public confidence in the administration of justice.

As a general rule, lawyers who were interviewed believe that bribery is widespread, noting that some judges drive expensive cars and live in expensive houses, even though their salaries are low. At the same time, they recognize that there are impartial judges who would not even think of accepting a bribe. According to these interviewees, the size of a bribe varies depending on how much is at stake and on the level of the court. Some concluded that in almost all cases involving important economic or political interests, bribery or improper influence is a strong possibility, with the result that decisions in such cases may not be based solely on the facts and law. Judges were more reserved on this topic. They generally admitted that corruption exists within the judiciary, but stated that it is not widespread, noting that during the past ten years no more than five judges were convicted of bribery. Currently, two judges are under criminal investigation for actions that may involve bribery. Furthermore, because judicial decisions can be also reviewed by a higher court, the benefit of the initial bribe is reduced. Interviewees frequently remarked that the low level of judges’ salaries is a major factor contributing to the corruption, but others believe that it is more a moral than a material problem.

In a study conducted by Transparency International Moldova, nearly half the households interviewed believed that problems brought before the courts of law are “often” solved with money, presents, or personal contacts (32.9%) or are “always” solved this way (15.8%). The percentages are similar for businesses interviewed (“often” – 27.3%; “always” – 16.3%). *Lilia Carasciuc et al., Corruption and Access to Justice* 100, 114 (Adam G. Levy ed., 2002).

“Telephone justice,” or attempts to influence the outcome of cases by putting pressure on the judges themselves or on the presidents of their courts, still reportedly exists in Moldova. One judge who was interviewed recounted recent cases in which persons in the President’s office or Parliament who had received petitions from litigants telephoned the judge hearing the case to inquire about it or make suggestions for its disposition. Another described a case in which the
president of a court was given direct instructions from the president of the higher court on how to decide a particular case. After the judge delivered a sentence according to his interpretation of the law, he was reportedly called to explain his "disobedience." Non-tenured judges are said to be more likely to accede to political pressure out of fear that they will not be given a lifetime appointment at the end of their five-year term. Another judge said that the precarious financial situation of some judges may tempt them to comply with requests from local authorities regarding pending litigation, in exchange for benefits such as installation of a natural gas system in the judge's home.

**Factor 21: Code of Ethics**

*A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.*

<table>
<thead>
<tr>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Judicial Code of Ethics has been adopted, covering significant issues of judges' professional responsibility. However, its impact is limited by the absence of any requirement that judges receive training in the Code, either before or after taking office.</td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Moldovan judges are subject to the Judicial Code of Ethics, adopted by a conference of judges on February 4, 2000. It consists of thirty brief rules addressing issues such as judicial independence, conflicts of interest, *ex parte* communications, and inappropriate political activity. These ethical norms have binding force, because violation of the Code is a basis for discipline or removal from office. See Factor 17, *supra*. In addition to the Judicial Code of Ethics, some statutes include ethical norms on conflicts of interest and inappropriate political activity. For example, the Civil Procedure Code lists grounds when a judge must recuse himself or herself from a lawsuit, such as having a personal interest or a familial relationship with parties or other participants, as well as other circumstances raising doubts as to the judge’s impartiality. CIVIL PROCEDURE CODE art. 19. In addition, the Law on Judicial Status prohibits judges from being members of political parties or engaging in political activities. LAW ON JUDICIAL STATUS art. 8(1)(c).

Interviewed judges were aware of the Code of Judicial Ethics and said that they generally comply with its provisions. Indeed, some had copies of it on their desk for ready reference. However, it is difficult to know to what extent the Code influences judicial conduct. For example, one judge characterized the Code as too restrictive and said that it is not binding. Other judges considered the Code to have too many requirements.
Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>A process exists for registering complaints concerning judicial misconduct, and it is used.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Citizens have the right to file complaints of judicial misconduct with the SCM, which is responsible for examining petitions involving judicial ethics and also has authority over proceedings against judges. CONST. arts. 52(1), 123; LAW ON THE SCM art. 4(f). In addition, there are no legal restrictions preventing lawyers or judges from filing complaints against other judges. One interviewee noted that when a judge deliberately or negligently violates the law, the higher court will reverse the decision and may notify the SCM of any basis for initiating disciplinary proceedings. If there is reason to believe that a judge may have engaged in misconduct, disciplinary proceedings can be initiated, and the Disciplinary Board will examine such cases. See Factor 17, supra.

During the first half of 2002, 540 petitions were filed with the SCM. According to the information from the SCM, most of the petitions related to delays in the examination of cases (240) or in execution of judgments (70), while 48 actually related to alleged judicial misconduct. During the same period, the Disciplinary Board examined seven disciplinary cases, and five judges were disciplined. SCM Informative Note on Petitions; see Factor 17, supra.

Those interviewed generally found this to be a meaningful process for registering complaints. However, one lawyer reported that although some judges frequently violate the Judicial Code of Ethics, he was reluctant to file complaints of judicial misconduct, because this could create problems if he had cases before such judges in the future.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
</tr>
</thead>
<tbody>
<tr>
<td>While court proceedings are generally open to the public and media, exceptions to this principle are broadly worded and ill-defined. Lack of courtroom space also hinders public access.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The Constitution states the general rule that “judicial sessions in all courts of law shall be public. Cases may be heard behind closed doors only as stipulated by law under compliance with all established procedural rules.” CONST. art. 117. Exceptions to this rule, some broadly worded, are found in the procedural codes. For example, the Civil Procedure Code provides that court
proceedings may be closed to the public if “public debates could harm the parties, the public order or morality or it runs counter to the interests of keeping state secrets, as well as in other cases provided by the law.” Civil Procedure Code art. 10. Under criminal procedure rules, courts conduct in camera hearings on arrest warrants; courts may also close the proceedings “in the interest of morality, public order or national security; when the interests of minors or protection of private life requires this measure; or when the court considers this measure as absolutely necessary and under the special circumstances publicity could damage the interest of the administration of justice”. Criminal Procedure Code art. 12. Even if the proceedings are closed, courts announce their decisions publicly although the reasoning behind the decision and written opinions are not a matter of public record. Law on Judicial Organization art. 10(2).

In practice, most trials are open to the public. However, interviewees stated that members of the public rarely attend trials unless they are highly publicized. There are other, more practical obstacles to attending trials. Some courts post public notices of the time and location of judicial proceedings only the morning before, making it difficult for the members of the public to plan to attend them. Others do not post such notices at all. Some courts lack sufficient courtrooms, and judges are forced to conduct hearings in their offices, which are frequently too small to accommodate the media and public in addition to the parties.

Filming, taking photographs, and making audio or video recordings of court sessions is prohibited, although parties have the right to make audio recordings in civil, administrative, and criminal cases. Law on Judicial Organization art. 14. However, one journalist who was interviewed reported that he usually has no difficulty attending court proceedings, and interviewees reported that judges occasionally allow journalists to make recordings in court. In general, it was reported that journalists from state television and radio stations are given priority.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although the law does not limit access to court decisions, in practice they are generally available only to parties. However, some significant appellate decisions, or summaries thereof, have been published.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

The procedural codes do not limit access to judicial decisions. However, most judicial decisions are unpublished and as a general rule only parties and other participants have access to the files containing the decision. See Civil Procedure Code arts. 31 (parties have a right to review court files and to copy documents), 212 (court must send copies of decisions to parties or other participants not present at trial). The Law on Access to Information states that government information, including information held by the judiciary, is available to the public (subject to certain restrictions). Law on Access to Information arts. 5(2)(a), 7, 10, Law No. 982-XIV of 11.05.2000, M.O. 88-90/664 (2000). Nonetheless, in practice, interviewees reported that in most instances only parties are allowed access to the files which contain the decisions and non-parties can gain access to a decision only with the permission of the court’s president. Some court presidents said they would provide copies of court decisions to those requesting them for justifiable reasons, such as academic research, but many interviewees were uncomfortable with the notion that the public should have free access to court records or decisions. There was a high level of concern
regarding confidentiality of information among those interviewed. For example, one interviewee speculated that information contained in the court files could be misused or abused for criminal purposes if such information were available to the public.

Although most judicial decisions are not published, summaries of significant decisions of the Supreme Court of Justice, the Court of Appeal, and the economic courts have been published either in the courts’ periodicals (e.g., Bulletin of the Supreme Court of Justice) or in separate collections (e.g., The 1996-1999 Case Law Collection of the Court of Appeal). The explanatory decisions of the Plenum of the Supreme Court of Justice have been also published.

It is far easier to review Constitutional Court decisions, because they are published in the official gazette, Monitorul Oficial. See LAW ON THE CONSTITUTIONAL COURT art. 26(4). They are also included in commercial legal databases.

**Factor 25: Maintenance of Trial Records**

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instead of verbatim records of court proceedings, court secretaries prepare summaries in longhand. These “minutes” of the proceedings are reported to be often inaccurate and incomplete.</td>
<td></td>
</tr>
</tbody>
</table>

**Analysis/Background:**

Although the Law on Judicial Organization allows courts to use any technical means to record their proceedings, provisions in the procedural codes limit the use of verbatim transcripts. See LAW ON JUDICIAL ORGANIZATION art. 14(1). Instead of verbatim records, court secretaries write “minutes” containing the essentials of the proceeding, including statements and requests of participants and a summary of their oral pleas. CIVIL PROCEDURE CODE art. 226. Participants have the right to request inclusion of matters they consider necessary for resolution of the case. No later than the day after conclusion of a civil trial or other procedural action, minutes must be prepared and signed by the secretary and the chairman of the session. Id. art. 227. Participants have the right to review the minutes and, if they believe them to be inaccurate or incomplete, request that the court correct them. Id. art. 228. Court secretaries also write minutes in criminal cases, but procedures for their review and verification differ from those in civil cases. In criminal trials, statements of parties and witnesses are written separately and then read and signed by the person making the statement, the chairman of the session, and the secretary, after all agree on its accuracy. CRIMINAL PROCEDURE CODE art. 230.

Only parties and other participants in the case are entitled to have access to the minutes, which are part of the file for the case. See Factor 24, supra.

Interviewees reported that minutes are often inaccurate because they are written in longhand by court secretaries who often lack adequate training and experience. A tribunal judge was particularly critical of the quality of trial records from the district courts. Another judge said that to ensure a satisfactory record for appellate review she took notes herself during the trial in order to correct and supplement the court secretary’s minutes. Although parties have the right to tape record court sessions, they reportedly rarely do so. See CIVIL PROCEDURE CODE art. 31/1.
VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most judges have a secretary to prepare minutes of proceedings, but they lack adequate assistance for legal research.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Every court is required to have a chancellery and archive to receive and file pleadings and maintain court records; a documentation service to administer the court’s library; and an administrative service to provide facilities adequate for the work of the court. LAW ON JUDICIAL ORGANIZATION arts. 45(1), 46, 47, 49. Although the president can hire and fire most of the court’s staff (excluding judicial executors and police assigned to the court), it is the MOJ that determines what staff positions the court will have. Id. art. 45.

Without exception, those interviewed considered court support staff inadequate as to numbers and training. For example, judges in the district courts and tribunals lack legal advisers to assist them with legal research. Even those courts with legal advisers do not have sufficient advisers. There is only one legal adviser, for example, to assist the twelve judges of the Chisinau Economic Court. The Supreme Court of Justice is somewhat better situated, with seven assistant judges to perform such functions, but this is still inadequate for the twenty-one judges of the court. On the other hand, the Constitutional Court has one assistant judge for each judge, in addition to other support staff.

Each judge is provided with a secretary, whose responsibilities include preparing minutes of court proceedings and filing. Because secretaries and other support staff are poorly paid, however, turnover is a significant problem. No training is required before secretaries are hired, and many leave before they have gained sufficient experience. The situation was improved somewhat in 2002, when the Judicial Training Center conducted training courses for all court secretaries.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Although a system for creating new judicial positions exists, vacancies often are not timely filled.</td>
<td></td>
</tr>
</tbody>
</table>
Analysis/Background:

Parliament determines the number of courts, as well as the number of judges in each court, on the recommendation of the SCM. LAW ON THE SCM art. 4(O). For instance, Parliament recently increased the number of judges of the Supreme Court of Justice from fifteen to twenty-one. LAW ON THE SUPREME COURT OF JUSTICE, annex.

Additional judicial positions may be required in other courts as workloads increase. According to the SCM, during the first half of 2002, 358 judges examined a total of 103,575 criminal, civil, administrative contraventions, administrative jurisdiction, and other cases. This represents an increase in the average monthly workload of judges from 53.7 cases during the same period in 2001 to 58 cases in the first half of 2002. During this period, the average monthly number of cases decided per judge was 73 in the district courts, 31 in the tribunals, 28 in the Court of Appeal, 35 in the Chisinau Economic Court, and 42 in the Republican Economic Court. In some district courts (e.g., Balti, Cahul, Cantemir, Taraclia) and in the Chisinau and Balti tribunals, the average monthly workload was even higher, varying from 86 to 132 cases per month during the same period. SCM Informative Note on Petitions.

The more pressing problem at present is filling existing vacancies. According to the SCM, there were forty vacant positions as of January 1, 2002. SCM 2001 REPORT. For example, according to information from the SCM, the Cahul district court had only four sitting judges and five vacancies as of July 2002. The situation is not unique to that court. Indeed, some interviewees reported that vacancies in their courts had not been filled for more than two years. Low judicial salaries and the failure to provide judges with housing were identified as the main obstacles to filling vacancies.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under the case filing and tracking system in use, information is entered by longhand in registers and on file cards. Although it generally permits court personnel to retrieve information on the status of a given case, the system is inefficient and time consuming.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Each court has a chancellery responsible for entering information in registers for civil, criminal, and administrative or other matters when each pleading is filed. In addition, after a complaint is accepted and the case assigned to a judge, chancellery personnel fill out a file card for the case with information such as the names of the parties, subject matter, case number, judge assigned, date when the case was filed, and eventually the date when it was decided, as well as any information on subsequent proceedings, such as an appeal.

Although the case filing and tracking system functions, it is inefficient and time consuming. Duplicative information is entered in the registers and file cards, and locating information on the status of a given case can be difficult. Furthermore, gathering data for quarterly and annual statistical reports to the MOJ and the SCM requires a great deal of time and effort. Some of those interviewed complained about long delays in the examination of cases, thereby violating the
right to a fair trial, which is confirmed by data from the SCM showing that an estimated 10-20% of criminal and civil cases were not decided within a reasonable time. See SCM 2001 REPORT. Under the present system, it is difficult to share information with other courts, and there are often delays in transmitting files to higher courts when cases are appealed. Furthermore, files have been lost in several instances. SCM 2001 REPORT.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most courts are without sufficient numbers of computers, and few of the computers have access to the Internet.</td>
<td></td>
</tr>
</tbody>
</table>

Analysis/Background:

Generally speaking, courts are not adequately equipped with computers, printers, and photocopy machines. Most courts have computers, but usually only one or two of them, and they are typically located in the president's office or the chancellery. As a result, the vast majority of judges do not have access to a computer. Some judges have been forced to purchase computers with their own funds. Furthermore, lack of government funding means that most of the computers in courts do not have access to the Internet or to legal databases.

The Supreme Court of Justice and the economic courts are better off than the other courts. The Supreme Court of Justice has approximately seventeen computers. All judges of the economic courts have computers that might be used for legal research and are connected to a local area network, but only one has access to current legislation.

Courts have generally had to rely on the generosity of international donors for much of this equipment. For example, according to interviewees, UNDP provided the tribunals and the Court of Appeal with computers and legal database software, and each of the district courts recently received a computer and printer.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>The system for distributing current legislation to judges is inadequate, and little of the jurisprudence is available to most of them.</td>
<td></td>
</tr>
</tbody>
</table>
Analysis/Background:

The MOJ is responsible for ensuring that courts have “normative acts, commentaries, guides and legal literature necessary for performing professional duties.” DECISION ON MINISTRY OF JUSTICE art. 8(30). For this reason, the MOJ provides all courts with a subscription to the official gazette, Monitorul Oficial, in which all statutes and other normative acts must be published before they can enter into force. However, because each court receives only one copy of Monitorul Oficial, all of the judges must share it. In some courts, copies of laws are sometimes made for all judges, but not all courts have photocopy machines. To attempt to deal with this problem, some court presidents call meetings of the judges to discuss new legislation. The MOJ sometimes also sends copies of new legislation to the courts.

Frequent amendments to the law make it difficult for judges to consult current legislation. Some have adopted the expedient of having amendments typed on pieces of paper, which they then tape in the appropriate places in their copies of the old law or code. In addition, some judges use their own funds to subscribe to Monitorul Oficial or purchase other legal publications.

Most judicial decisions are unpublished, which makes access to jurisprudence difficult. However, some judicial decisions or summaries of decisions are available in bulletins published by the courts. Although many courts have law libraries with collections of legislation and other publications, they are generally reported to be inadequate due to lack of sufficient funding.

There are periodically updated commercial legal databases of published acts, and there is also a free database available on Internet (e.g., www.docs.md). However, the general paucity of computers and inadequate financing preclude access to databases by the vast majority of judges in the lower courts. The Supreme Court of Justice and “MoldData” Company recently developed Lex Practica, a database of jurisprudence, including important explanatory and judicial decisions of the court, but it is not yet generally available to the other courts.